J & C Towing Co. and Belmont Marines Services, Inc. *and* United Steelworkers of America, AFL–CIO–CLC. Cases 6–CA–22336, 6–CA–22359, 6–CA–22423, 6–CA–22746, and 6–CA–23478

April 22, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On September 9, 1991, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondents and the General Counsel filed exceptions and supporting briefs, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified and set out in full below.[1]

1. The judge found inter alia, that the Respondents violated Section 8(a)(5) and (1) by stalling and foot-dragging about agreeing to bargain face to face with the Union following its certification as bargaining representative, and by offering only the status quo for every term and condition of employment at and after the one bargaining session held on May 23, 1990.

The Respondents except to the judge's finding of an 8(a)(5) and (1) violation based on their refusal to bargain ''face to face.'' They argue that owner John L. Johnson's decision not to participate personally in bargaining negotiations on May 23 was not unlawful because the Board recognizes the propriety of conducting negotiations through legal counsel. In adopting the judge's finding, we rely in particular on the evidence that establishes the Respondents' dilatory bargaining tactics, their holding of one ''sham'' bargaining session, and the Respondents' legal counsel's failure thereafter to engage in ''face to face'' negotiations. We place no reliance, however, on Johnson's lack of personal participation in bargaining.

The Respondents further except to the portion of the judge's recommended Order requiring them to cease and desist from ''offering only the status quo'' because no party can be required to agree to any particular substantive bargaining provision. *H. K. Porter Co.*, 397 U.S. 99 (1970). We shall delete the quoted language from our Order because, as the Respondents suggest, it may run afoul of the *H. K. Porter* holding.[2]

2. The judge found an 8(a)(1) threat based on Supervisor Becker's statement to employee Larry M. Huggins that Johnson did not want union representatives coming onto his property and would have them arrested as trespassers if they did so. The Respondents argue in their exceptions that the alleged threat to arrest is neither alleged in the complaint nor does it constitute an unlawful threat. Rather, the Respondents contend that Becker's isolated remark is merely an equivocal assertion of the Respondents' right to exclude nonemployees from trespassing on company property.

We find, in agreement with the Respondents, that the evidence in this case does not warrant finding this violation, which the General Counsel never alleged as unlawful either in the complaint or at the hearing.[3] On this record, Becker's general reference to Johnson's intention to prevent trespassing on the Respondents' property by apparently nonemployee union representatives does not rise to the level of an unlawful threat[4] We shall therefore reverse the judge's 8(a)(1) finding.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 6.

''6. By the acts and conduct set forth in Conclusion of Law 5; by creating the impression of company surveillance of employee union activities; by coercively interrogating employees concerning their union sympathies and activities and the union sympathies and activities of other employees; by soliciting grievances from employees during a representation election campaign with a view towards adjusting those grievances; by promising employees benefits if they would reject the Union; and by threatening to go out of business or to close the plant if employees selected the Union as their bargaining representative, the Respondents violated Section 8(a)(1) of the Act.''

ORDER

The National Labor Relations Board orders that the Respondents, J & C Towing Co., Inc. and Belmont

[1] We shall substitute our Order and notice for those of the judge in order to expand the scope of the expunction order to cover anyone who has been disciplined pursuant to the unlawfully imposed disciplinary system, to require the rescission of this system, to correct the judge's omission of any reference to the Respondents' creation of the impression of surveillance of employee union activities, and to delete certain recommended cease-and-desist provisions, as a result, infra, of our reversal of one of his findings and our finding merit to the Respondents' exception to being precluded from making future bargaining offers limited to the status quo.

[2] This modification of the Order, however, should not be construed as a license to the Respondents to repeat making an offer of the status quo in future negotiations with the Union. Any such offer must be made in good faith and should be capable of being so substantiated. In this connection, we agree with the judge that the Respondents' past offers of the status quo were part and parcel of its bad-faith bargaining conduct.

[3] As noted in fn. 1 of the judge's decision, the General Counsel did not file a brief with the judge.

[4] See also *Lechmere, Inc. v. NLRB*, 112 S.Ct. 841 (1992).

Marine Services, Inc., Wheeling, West Virginia, and Bellaire, Ohio, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating the impression of company surveillance of employee union activities.

(b) Coercively interrogating employees concerning their union activities and sympathies and the union sympathies and activities of other employees.

(c) Soliciting grievances from employees during a representation campaign with a view toward adjusting their grievances.

(d) Promising employees benefits if they reject the Union.

(e) Threatening to go out of business or to close the plant if employees select a union as their bargaining representative.

(f) Refusing to bargain in good faith with the United Steelworkers of America, AFL–CIO–CLC as the exclusive collective-bargaining representative of the production and maintenance employees employed by the Respondents at their Wheeling, West Virginia, and Bellaire, Ohio facilities.

(g) Unilaterally adopting or implementing drug and alcohol policies, attendance and call-in rules, a system of written warnings, a progressive disciplinary system, or any other term or condition of employment.

(h) Failing or refusing to furnish the Union in a timely fashion with wage data relating to bargaining unit employees or with any other requested information which is relevant to the Union's duty as the exclusive representative of bargaining unit employees.

(i) Stalling, footdragging, or giving the Union a runaround to avoid setting a date for collective-bargaining negotiations.

(j) Refusing to meet face to face with the Union for purposes of collective-bargaining negotiations.

(k) Refusing to make meaningful counterproposals to union bargaining proposals.

(l) Refusing to bargain on any subject other than wages.

(m) Disciplining employees who are members of the Union's in-plant negotiating committee for missing work in order to attend collective-bargaining sessions.

(n) By any other means or in any manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain collectively in good faith with the United Steelworkers of America, AFL–CIO–CLC as the exclusive collective-bargaining representative of the production and maintenance employees employed by the Respondents at their Bellaire, Ohio, and Wheeling, West Virginia facilities and, if agreement is reached, embody the same in a written, signed document.

(b) Rescind the unilaterally adopted drug and alcohol policy, attendance and call-in rules, system of written warnings, and progressive disciplinary system.

(c) Furnish the Union in a timely fashion with wage data relating to bargaining unit employees or, on request, with any other information which is relevant to the Union's duty as the exclusive representative of bargaining unit employees.

(d) Remove from the personnel records of any production and maintenance employee, including Kevin Hoge and Kenneth R. Huggins, any disciplinary warnings which were issued pursuant to a written policy of progressive warnings which was adopted by the Respondents in violation of the Act and notify them in writing that this has been done and that such warnings will not be the basis for future personnel actions.

(e) Post at the Respondents' Wheeling, West Virginia, and Bellaire, Ohio places of business copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT create the impression of company surveillance of, or coercively interrogate employees concerning, their union activities and sympathies and the union activities and sympathies of other employees.

WE WILL NOT solicit grievances from employees during a representation campaign with a view toward adjusting those grievances.

WE WILL NOT promise benefits to employees if they will reject the Union.

WE WILL NOT threaten to go out of business or to close the plant if employees select a union as their bargaining representative.

WE WILL NOT refuse to bargain with the United Steelworkers of America, AFL–CIO–CLC as the exclusive representative of the production and maintenance employees employed at our Bellaire, Ohio, and Wheeling, West Virginia facilities.

WE WILL NOT unilaterally adopt or implement drug and alcohol policies, attendance and call-in rules, a system of written warnings, a progressive disciplinary system, or any other terms or conditions of employment.

WE WILL NOT fail or refuse to furnish the Union in a timely fashion with wage data relating to bargaining unit employees or with any other requested information that is relevant and necessary to the Union's duty as exclusive representative of bargaining unit employees.

WE WILL NOT stall, footdrag, or give the Union a runaround to avoid setting a date for collective-bargaining negotiations.

WE WILL NOT refuse to meet face to face with the Union for purposes of collective-bargaining negotiations.

WE WILL NOT refuse to make meaningful counterproposals to union bargaining proposals.

WE WILL NOT refuse to bargain on any subject other than wages.

WE WILL NOT discipline employees who are members of the Union's in-plant negotiating committee for missing work in order to attend collective-bargaining sessions.

WE WILL NOT by any other means or in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and bargain collectively in good faith with the Union and, if agreement is reached, embody the same in a written, signed document.

WE WILL rescind the unilaterally adopted drug and alcohol policies, attendance and call-in rules, system of written warnings, progressive disciplinary system, or any other terms or conditions of employment.

WE WILL remove from the personnel records of any production and maintenance employee, including Kevin Hoge and Kenneth R. Huggins, any disciplinary warnings which were issued pursuant to a written policy of progressive warnings which we adopted in violation of the Act and WE WILL notify them in writing that this has been done and that such warnings will not form the basis for future personnel actions.

J & C TOWING CO., INC. AND BELMONT MARINE SERVICES, INC.

Dalia Belinkoff, Esq., for the General Counsel.
James L. Loll, Esq., of Beaver, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

FINDINGS OF FACT

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me at Wheeling, West Virginia, upon a consolidated unfair labor practice complaint,[1] issued by the Regional Director of the Board's Region 6, which alleges that Respondents J & C Towing Co., Inc., and its wholly owned subsidiary, Belmont Marine Services, Inc.,[2]

[1] The principal docket entries in this case are as follows: charge filed herein by the United Steelworkers of America (the Union) against the Respondents in Case 6–CA–22336 on December 21, 1989, and amended on April 18, 1990; charge filed herein by the Union against the Respondents in Case 6–CA–22359, on January 5, 1990, and amended on April 17, 1990; charge filed herein by the Union against the Respondents in Case 6–CA–22397, on January 25, 1990, and a related charge was filed on January 26, 1990; charge filed herein by the Union against the Respondents in Case 6–CA–22423, on February 1, 1990; charge filed herein by the Union against the Respondents in Case 6–CA–22746, on June 1, 1990; consolidated complaint issued by the Regional Director for Region 6, in the above-entitled cases which was the subject of an all-party informal settlement approved by the Regional Director for Region 6, on December 19, 1990; charge filed herein by the Union against the Respondents in Case 6–CA–23478, on March 22, 1991, and amended on April 26, 1991; complaint issued by the Regional Director for Region 6, against the Respondents on April 30, 1991, in Case 6–CA–23478; order setting aside and vacating the settlement agreement which was approved on December 19, 1990, and consolidation of the complaints in those cases with the complaint in Case 6–CA–23478, issued by the Regional Director for Region 6, on May 16, 1991; Respondents' answer filed on May 30, 1991; order severing cases and dismissing complaint in Cases 6–CA–22397 (2 and 3) issued by the Regional Director for Region 6, on July 22, 1991; amended charges filed in pending cases on July 17, 1991; and amended consolidated complaint issued by the Regional Director for Region 6, in those cases on July 26, 1991; Respondents' answer filed on August 2, 1991; hearing held in Wheeling, West Virginia, on August 14, 1991; briefs waived by the General Counsel and the Respondents.

[2] The General Counsel alleges, and the Respondents admit, that both are a single employer within the meaning of the Act. It is further alleged and admitted that J & C Towing, Inc., and Belmont Marine Services, Inc. are engaged in the towing and barge repair business at Bellaire, Ohio, and Wheeling, West Virginia, and that, during the course and conduct of these businesses, they annually performed

violated Section 8(a)(1) and (5) of the Act. More particularly, the pending consolidated complaint alleges that these joint employers coercively interrogated employees concerning their union activities and the union activities of others, threatened employees with plant closing if they supported the Union, solicited grievances from employees with a view toward adjusting them, created the impression among employees that their union activities were a matter of company surveillance, promised employees increased wages and benefits if they would reject the Union, and, following the certification of the Union as the exclusive collective-bargaining representative of the Respondents' employees, unilaterally implemented a progressive disciplinary policy and system of written reprimands, unilaterally implemented a drug and alcohol policy containing mandatory discharge provisions, refused to meet face to face with the Union for the purpose of collective bargaining, made no offer during collective bargaining other than to continue the status quo, discontinued collective bargaining with the Respondents, and refused to supply the Union with requested information pertaining to the wage scale of bargaining unit employees.

The original consolidated complaint alleged the discriminatory discharge of several employees. A settlement agreement approved on December 21, 1990, remedied these violations by providing for reinstatement of discharged employees and the payment of various amounts of backpay. Except for that portion, the Regional Director set aside the settlement agreement because of alleged postsettlement violations of the Act and because the Respondents assertedly refused to comply with their commitment to post the settlement agreement notice at its two facilities for a period of 60 days. The Respondents entered a formal denial of the allegations of unfair labor practices on their part but did not present any evidence at the hearing to rebut the General Counsel's case. Upon these contentions, the issues herein were drawn.[3]

I. THE UNFAIR LABOR PRACTICES ALLEGED

Respondent J & C Towing, Inc. operates a facility on the east bank of the Ohio River just south of Wheeling, West Virginia, where it cleans and repairs coal barges and connects and disconnects barges from tow boats. Respondent Belmont Marine Services, Inc. performs the same functions at a facility on the west bank of the Ohio River in Bellaire, Ohio, about 3 miles downstream from the Wheeling operation. Both companies are owned and controlled by John L. Johnson, who bought and consolidated them in 1986. Johnson told employees when he took control of the Company that he would fire them if they talked union. Prior to that time, the Bellaire operation was owned and operated by Bellaire Marine Service. Its employees were covered by a series of collective-bargaining agreements executed by the Charging Party in this case. However, the most recent of those agreements ceased to have any meaning or effect when Bellaire Marine Service went out of business. The Respondents admit that they are a single employer. The bargaining unit, composed of pilots, deckhands, crane operators, oilers, welders, and laborers at both facilities, has between 30 and 40 employees. Approximately seven of them are licensed by the Coast Guard to operate tugboats on and along the river.

On November 13, 1989, Rick Shaw, a pilot employed by the Respondent, phoned the Steelworkers Hall at Wheeling and spoke with Paul W. Tucker, an organizer for District 23 of the United Steelworkers of America. He inquired about the possibility of organizing the Respondents' business. In the ensuing month, the two had several conversations which resulted in the holding of a meeting on Saturday, December 16, 1989, at the home of Kevin Hoge, a tugboat captain and long-time employee of J & C Towing. Approximately 15 employees from both operations attended the meeting at Hoge's home in Wheeling. They signed authorization cards, an attendance roster, and a list of volunteers to serve on the union organizing committee.

The following Monday, Tucker wrote a certified letter to Johnson, setting forth the names of 15 employees and describing them as representing the United Steelworkers of America as steelworker in-plant committee members. On the same day, Ron Burris, one of the Respondents' admitted supervisors, spoke to crane operator Edward A. Thomas in the office of the Wheeling plant and asked him if he had heard anything about the Union. (Thomas' name was included on Tucker's letter.) Burris told Thomas that he had heard that Hoge had held a meeting and that 15 or 16 employees were there. Thomas replied that he was not going to lie to Burris and admitted that he was present. Burris then asked Thomas what the employees wanted and what the issues were. Thomas replied that there were no issues, telling Burris that the men had attended the meeting to learn about what was going on.

John Coulter is a welder at the Bellaire facility. In mid-December 1989, while he was doing some paperwork in the plant office, Chuck Appleby, the yard manager and an admitted supervisor, asked him if he knew anything about the Union. (Like Thomas, Coulter's name appeared on Tucker's December 18 letter.) Coulter did not reply directly but told Appleby that he had asked three different people and had received three different answers as to what his hourly rate was. Apparently, the computations on his weekly paystub worked out to different amounts each week. Coulter told Appleby that he never did find out the answer to his question. Appleby then asked Coulter if he knew who was involved with the Union. Coulter replied that he did not know.

A week or two later, Paul Stonebreaker, a repairman at the Wheeling plant, was driving to a tugboat with admitted Supervisor Robert Becker. They were delivering groceries to the boat. Stonebreaker asked Becker what Johnson would do if the employees pursued the union organizing campaign. Becker replied that ''John'' would either close the place or sell it and operate it, presumably, through another corporation. A week or two thereafter, Johnson and Becker had occasion to speak with Stonebreaker and crane operator Greg Richardson in the garage at the Wheeling plant during a lunchbreak. Johnson asked Richardson what it would take to get the employees to drop the Union. Richardson replied, ''Paid holidays, paid vacation, and a pension.'' Johnson then observed that there was nothing wrong with those requests and stated that he could meet those needs. He suggested that a pension could be paid for by deducting from the paychecks of each employee the amount they would have to pay in

services valued in excess of $50,000 in interstate commerce. Accordingly, they were an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

[3] The corrections in the transcript have been noted and corrected.

union dues and applying the money to an IRA. He went on to state that he would not operate the place with a union and would close it. Stonebreaker spoke up and said that, as he was getting on toward middle age, he would like to have a pension.

Former employee Larry M. Huggins attended the meeting at Hoge's house. His name was on the list of employees in Tucker's letter. Early in January 1990, while in Becker's office at the Wheeling plant, Becker asked him what he wanted out of the Union. Huggins replied that it seemed like everything at the Company was for Johnson and nothing was for the employees. Becker went on to say that Johnson did not want union representatives on his property and would have them arrested as trespassers. He also told Huggins that, if the employees brought the Union into the Company, Johnson would sell the business or close it down. Two days later, Johnson spoke with Huggins and employee Halbert Baker in the lunchroom. He asked them, ''What would it take not to have a union? '' They replied that they wanted paid holidays, paid vacations, and pay raises. Johnson indicated that he would agree to five paid holidays and a week's paid vacation. He told Baker and Huggins that he would have his accountants calculate what it would cost each employee each month in union dues, deduct the sum, and put it in a pension fund. Johnson also said he had spoken about this question with Richardson and some other employees. Huggins and Baker replied that it sounded good to them and they returned to work. As they were leaving, Johnson asked these employees if they were for him or against him. Both replied that they were for him.

On another occasion, Baker spoke with Becker concerning the Union aboard a tugboat called the ''Tradewinds.'' Employees Robert Sellers and Wayne Abercrombie were present. They asked Becker what Johnson thought about the Union. Becker replied that Johnson had not said very much but insisted, ''I can tell you one thing. Belmont Marine won't be with us too long.

About 2 weeks after he held the organizational meeting at his house, Hoge was riding in a pickup truck with Becker. Becker asked him if there was any way the Company could work a deal to prevent the Union from coming into the plant. When Hoge expressed the opinion that this would not be possible, Becker wished him good luck, saying that Johnson would close the place down.

The Union filed a representation petition that brought about an election which took place on February 12, 1990. The Union won by a margin of about 2 to 1 and was certified on February 23. On February 20, Johnson posted the following notice:

> TO: ALL EMPLOYEES OF JOHN'S TOWING, J & C TOWING AND BELMONT MARINE SERVICE[4]
>
> It is Company policy that there will not be any drugs or alcoholic beverages permitted on any boats or company property.
>
> Also, anyone reporting for work under the influence will not be permitted on company property or boats.
>
> Anyone not abiding by these rules will be discharged.

[4] John's Towing is a third company owned by Johnson but it is not involved in these proceedings.

The record is clear that, before this date, the Company had no such policy as the one announced in the above-cited notice. The Respondents pointed out that, in December 1989, the Coast Guard promulgated a regulation prohibiting the manning of tugboats by licensed personnel who were under the influence of drugs or alcohol. However, this regulation did not require the discharge of any offender nor did it apply to nonlicensed personnel.

The Company also instituted a progressive disciplinary policy relating to the question of failing to ''report off'' for work, i.e., the failure of an employee to notify the Company if he did not intend to report for work on a particular day. It is undisputed in this record that, before the election, employees did, from time to time, miss work without notifying the Company of their intended absence and that no discipline, either verbal or written, was imposed. Moreover, the Respondents did not have in place any written disciplinary policies nor had they adopted any system of progressive discipline, i.e., the administration of harsher penalties for repeated offenses. The Respondents prepared and used a form for absenteeism which read:

> This is a written reprimand concerning not reporting off work on [fill in date].
>
> J & C Towing Service, Inc., is a service company that is expected, by its customers, to be efficient and reliable to their needs. J & C Towing depends on you, the employee, to be dependable, responsible, and perform your duties professionally.
>
> You have been verbally informed of the following criteria:
>
> 1. Absent—inform your supervisor the day before or as soon as—practical before the start of your next scheduled work day.
>
> 2. Failing to report off work is inexcusable.
>
> If you receive four written reprimands you will be terminated, without further notice, from your employment with J & C Towing.

In the next few months, several written reprimands were given to employees either for failing to report off or for other asserted infractions. On March 27, 1990, Hoge received a letter of reprimand from Becker for insubordination and disorderly conduct. On May 25, he received another warning from Becker for failing to report off on May 23. That letter recited that Hoge had already received two other written warnings (it counted a single warning for insubordination and disorderly conduct as two offenses), and told Hoge that he would be terminated for any further incidents. May 23 was the date of the first and only negotiating session between these parties. Hoge had informed the dispatcher at the Company on the previous day that he would be absent on May 23 to attend this meeting. On May 25, 1990, Kenneth R. ''Dick'' Huggins, the brother of Larry Huggins, received a warning for failure to report off on May 23 and received a second letter on the same date for failing to report off on May 24. Like Hoge, Huggins was in attendance at the negotiations of May 23 as a member of the Union's negotiating committee.

While these incidents were occurring at the plant, the Union was making plans to inaugurate collective bargaining on the basis of its newly won certification. Don Leamon, a

staff representative of the Charging Party from Steubenville, Ohio, was assigned to assist the members of the Respondents' bargaining unit. He phoned Johnson two or three times in Wheeling but received no reply. He found in the record in the representation proceeding that the Respondents were represented by James L. Loll so he wrote Loll a letter on April 27, 1990, asking to set up a meeting for bargaining. A meeting was set for 10 a.m. on May 23 at the Steelworkers hall in Wheeling.

Johnson and Loll appeared at the meeting. Loll told Lemmon that he did not think it would be a good idea for Johnson to be personally involved in any discussions because verbal hostilities might erupt so, at his suggestion and with the reluctant concurrence of the Union, Johnson remained in a side room. Loll conducted discussions on the part of the Company and took recesses on a couple of occasions to consult with Johnson and to report back Johnson's decisions. The Union was represented by Lemmon and an in-plant committee composed of Hoge, Shaw, and ''Dick'' Huggins.

Lemmon brought with him a copy of the contract which the Union had concluded some years before with Bellaire Marine Service, the predecessor of Belmont, and gave it to Loll. He told Loll that the old Bellaire contract was not being offered as a set of bargaining demands but merely to serve as a format for negotiations, as it contained all the elements which go to make up a conventional collective-bargaining agreement. The parties went through the document hurriedly.

Loll then asked the Union for a wage proposal. Lemmon said that they had none to present at that time, observing that in normal collective bargaining, the parties proceed to discuss noneconomic matters first and leave wage rates to later sessions. Loll persisted. Lemmon said that it would be difficult to present such a proposal at that time since the Union did not even know what the existing rates were. They discussed the question of vacations and holidays briefly but Loll came back to the question of wages. Lemmon said that he could give Loll a ballpark idea of what the Union was interested in but insisted that it would be unfair to hold them to it since the Union first needed to know what the existing rates were.

At Loll's insistence, union negotiators caucused privately and returned with a set of wage proposals which they presented verbally. Loll then excused himself and went to speak with Johnson.

Loll returned after a 10- or 15-minute conference with his client and told the union representatives that the Company would offer only the ''status quo.'' Lemmon replied that the status quo ''wouldn't fly.'' He asked Loll for a counterproposal but Loll had none. Lemmon then asked Loll if there was anything else in the old Bellaire agreement that the parties could talk about and whether there were any noneconomic matters contained therein to which the Company had no objection. Loll said that he was not interested in talking about anything else and that, when he said '' status quo,'' this phrase applied to everything the Company was currently doing. As the meeting was breaking up, Lemmon asked Loll about scheduling another meeting. Loll replied that he would get back to Lemmon before the end of the day. Lemmon then asked Loll to supply him with a copy of the current wage scale of unit employees.

Loll and Lemmon spoke by telephone in a day or so. Loll repeated that the Company was only offering the status quo and that it did not intend to meet any further. Lemmon objected, stating that collective bargaining could not work like that and accusing the Company of failing to comply with the law. Loll's only reply to the accusation was that the Company was offering the status quo and was not interested in any further meetings. On May 25, Lemmon wrote Loll a letter reciting what had occurred, repeating his accusation that the Respondents were violating the law, and again asking for a copy of the current bargaining unit wage scale. He asked Johnson and Loll to reconsider and to set up another meeting for negotiations. There were no further bargaining sessions.

The original set of five charges in this consolidated case, including the charge accusing the Respondents of violating Section 8(a)(3) of the Act by discharging several employees for union activities, resulted in a consolidated complaint which was scheduled for hearing on December 19, 1990. Before the hearing opened, the parties entered into a settlement agreement of the 8(a)(1), (3), and (5) allegations. This agreement, in evidence in this case as General Counsel's Exhibit 19, required many things of the Respondents. As a matter of course, it required the Respondents push to post the notice which embodied the substance of the agreement in all places where notices to employees are customarily posted and to maintain the posting for 60 consecutive days. It required the Respondents to offer reinstatement to nine named discriminatees and to pay them various amounts of backpay set forth after their names. It also required the Respondents to cease and desist from various violations of Section 8(a)(1) of the Act—promising benefits, interrogating employees, threatening to close the plant, and creating the impression that union activities were the subject of company surveillance. The agreement required the Respondents to bargain collectively in good faith with the Union, to meet face to face with union negotiators, to refrain from offering solely the status quo, and to refrain from unilaterally implementing a progressive disciplinary policy and a system of written reprimands. It also obligated the Respondents to rescind its new drug and alcohol policy and further obligated them to supply the Union with a copy of the hourly wage scale of bargaining unit employees.

On January 9, 1991, following the execution and approval of the settlement agreement by the Regional Director, Lemmon wrote Loll a letter and asked him to set up a negotiating session. He received no reply and attempted to reach Loll by phone without success. Lemmon sent Loll a second letter, dated January 30, again asking for a date for negotiations. This letter was addressed to Johnson as well. On February 21, 1991, Loll replied as follows:

> Please be advised that our offer stands at the status quo. At this time there is no change in the wages or benefits which Mr. Johnson plans to offer.
>
> Contact my office if there is anything else you wish to discuss.

Lemmon found this response wholly unsatisfactory. After several tries, he was able to reach Johnson by telephone on March 5 and asked him to set a date for bargaining. Johnson told Lemmon that Loll was ''handling the whole shooting match'' and that Lemmon should contact Loll. Lemmon told

Johnson that he called Loll several times but that Loll did not return his calls. On March 6, Lemmon wrote another letter to Loll and Johnson, claiming that they were in violation of the settlement agreement. He accused them of failing to post the notice required by that agreement and threatened to go to the Board. He received no response from this letter nor has he received the wage information he had requested. Lemmon then requested the office of the Federal Mediation and Conciliation Service (FMCS) in Parkersburg to intervene and see if they could facilitate negotiations. The FMCS was unable to set up a meeting.

On July 17, 1991, the Respondents gave ''Dick'' Huggins a written warning for failure to report off work. The document stated that Huggins was guilty of a prior offense. On July 31, 1991, just 2 weeks before the hearing in this case, the Respondent gave Hoge a written warning for abuse of company property. It detailed an event involving the throwing of a wheel wash on the gunnel of a tugboat.

The Respondents state that they posted the notice portion of the December 19 settlement agreement at the Wheeling facility but claim that the notice was removed on the same day it was posted. They admit that they made no further effort to continue the posting. There is no credible evidence that the notice was ever posted at the Bellaire facility.

II. ANALYSIS AND CONCLUSIONS

The settlement agreement entered into by the parties on December 19, 1990, and approved by the Regional Director on December 21 obligated the Respondents to refrain from certain illegal acts recited in the notice attached thereto and to perform certain other affirmative acts which were also outlined therein. Furthermore, the agreement obligated the Respondents to post the notice for 60 consecutive days in all places where notices to employees are normally posted. As stated above, there is no credible evidence that the Respondents ever posted the notice at its Bellaire, Ohio facility. The Respondents admit that, while they may have posted the notice in question at their Wheeling, West Virginia facility, they did not do so for 60 consecutive days. The notice was posted early in the morning of a workday. By noon it was missing. No action was taken to repost the notice and to ensure that the reposted notice was kept in place for the required period of time. This breach of the settlement agreement was, in and of itself, sufficient to permit the Regional Director to set it aside and to proceed to litigate the consolidated complaint which ostensibly had been settled. As discussed hereinafter, the Respondents committed subsequent unfair labor practices, any or all of which also would have justified the Regional Director in setting aside the agreement. Accordingly, this decision must address both the unfair labor practices alleged to have occurred before December 21, 1990, as well as those which occurred thereafter.

Except for an explanation of the posting of the notice at the Wheeling plant, Respondents presented no evidence on the merits of the case. They called neither the president of the Company nor any supervisor to explain, deny, or rebut any testimony adduced by the General Counsel, nor did the Respondents explain their failure to do so. Under well-settled law, I conclude from this omission that these witnessess if produced, would support and corroborate the General Counsel's case.[5]

(a) On December 18, the Monday following the union meeting at Hose's house, Burris told Thomas that he had heard that a union meeting had taken place and that 15 or 16 employees were present. In making that statement, Burris created the impression that the union activities of employees were the subject of company surveillance in violation of Section 8(a)(1) of the Act.

(b) During the same conversation, Burris asked Thomas what the employees wanted and what the issues were. In so doing, Burris solicited grievances from employees during an organization drive with a view toward adjusting them in violation of Section 8(a)(1) of the Act.

(c) During the same time period when Burris was asking employees at Wheeling about the progress of the Union's organizational campaign, Appleby was doing the same thing at Bellaire. He spoke with Coulter in the company office and asked Coulter if he knew anything about the Union and who was involved in it. By interrogating employees concerning their union activities and the union activities of others, the Respondents herein violated Section 8(a)(1) of the Act.

(d) When Stonebreaker asked Becker what the company president would do if the employees became unionized, Becker replied that Johnson would either close the place or sell it and operate it through another corporation. This statement constitutes an unlawful threat which violates Section 8(a)(1) of the Act.

(e) Two weeks later, both Johnson and Becker spoke to Stonebreaker and Richardson during a lunchbreak. Johnson asked Richardson what it would take to get the employees to drop the Union. When Richardson responded to his question with specifics, Johnson observed that there was nothing wrong with those requests and he could comply with them. By soliciting grievances during a union campaign with a view toward adjusting them, the Respondents herein violated Section 8(a)(1) of the Act. Johnson's offer to give them paid vacations and holidays if they would reject the Union constitutes a promise of benefits which violates Section 8(a)(1) of the Act.

(f) Johnson then posed the same question to Stonebreaker. The latter replied that he wanted a pension. By soliciting additional grievances with a view toward adjusting them, the Respondents again violated Section 8(a)(1) of the Act.

(g) Early in January 1990, Becker asked Larry M. Huggins what he wanted out of the Union. This statement constitutes an unlawful solicitation of grievances with a view toward adjusting them in violation of Section 8(a)(1) of the Act.

(h) Becker went on to state that Johnson would arrest union representatives as trespassers if they came on his property and threatened that, if employees brought the Union into the Company, Johnson would sell the business or close it down. These statements constitute unlawful threats which violate Section 8(a)(1) of the Act.

(i) Soon thereafter, Johnson spoke with Larry M. Huggins and Halbert Baker, asking them what it would take not to have a union. When they gave him a responsive answer, he indicated that he would comply with some of their requests. The questions posed by Johnson constituted an unlawful so-

[5] Johnson, the president and owner of these companies, did not even attend the hearing.

licitation of grievances with a view toward adjusting them in violation of Section 8(a)(1) of the Act. This offer to give them paid vacations and paid holidays if they would reject the Union constitutes a promise of benefits which violates Section 8(a)(1) of the Act.

(j) As Johnson was concluding the above-recited conversation, he asked Huggins and Baker whether they were for him or against him. In the context, the questions were ominous and constituted unlawful interrogation concerning the union sympathies of employees in violation of Section 8(a)(1) of the Act.

(k) Baker, Abercrombie, and Sellers were together with Becker aboard a tugboat and asked Becker what Johnson thought about the Union. Becker replied that ''I can tell you one thing. Belmont Marine won't be with us too long.'' This reply constituted an unlawful threat to close or sell the business in reprisal for union activities in violation of Section 8(a)(1) of the Act.

(l) About 2 weeks later, Becker asked Hose what it would take to prevent the Union from coming into the plant. This question constituted an unlawful solicitation of grievances in violation of Section 8(a)(1) of the Act.

(m) When Hose replied that it would not be possible to prevent the Union from coming into the plant, Becker said that Johnson would close the place down. This statement constituted an unlawful threat in violation of Section 8(a)(1) of the Act.

(n) Shortly after the Union won the representation election in February, 1990, the Respondents posted a notice forbidding employees to come on company property, including but not limited to boarding tugboats, while under the influence of drugs or alcohol. It threatened discharge for a violation of this rule. The Company had never before had a written rule or any rule concerning the use of drugs or alcohol. It had never had a rule imposing discharge as a penalty for reporting to work under the influence of either agent. This rule was announced by a written document posted on the bulletin board. Its provisions went far beyond the requirements of new Coast Guard regulations, which applied only to licensed personnel and did not require discharge for being aboard a vessel under the influence of drugs or alcohol but merely removal from the vessel. There is no suggestion that the Respondents made any effort to notify the Union of this new policy or to negotiate its provisions. Following the Union's victory at the representation election, they were under a duty to do so. By unilaterally adopting a new drug and alcohol policy, the Respondents violated Section 8(a)(1) and (5) of the Act.

(o) Following the election, the Respondents instituted a new disciplinary policy respecting the failure of employees to notify the Company when they were not coming to work. Previously, employees had frequently failed to notify the Company that they were not coming to work without incurring any penalty. The new policy provided for progressive discipline resulting in discharge for the fourth violation. Again there is no suggestion that the Respondents negotiated, or offered to negotiate, the adoption or implementation of these rules with the Respondents. By unilaterally adopting this policy, the Respondents violated Section 8(a)(1) and (5) of the Act.

(p) The Respondents not only adopted a new disciplinary policy respecting the failure to ''report off,'' they also issued written disciplinary warnings to Hose and Kenneth Huggins on several occasions for not ''reporting off.'' By implementing an unlawfully adopted disciplinary policy, the Respondents herein violated Section 8(a)(1) and (5) of the Act.

(q) The collective-bargaining session that took place on May 23 was a sham. The Respondents stalled and dragged their feet about agreeing to the meeting. At the meeting, they refused to discuss any subject other than wages. They offered only the status quo as to every existing wage rate and term and condition of employment. They issued disciplinary warnings to two members of the Union's in-plant negotiating team for failing to notify them of impending absences when they knew full well where these employees were, that they were members of the Union's negotiating team, and that they would be absent from work to participate in the collective-bargaining session. During the brief bargaining session and thereafter, they refused to make any proposals or counterproposals. Each and every one of these actions, in and of themselves, constituted a violation of Section 8(a)(1) and (5) of the Act and evidenced overall subjective bad faith on the part of the Respondents with regard to their newly acquired duty to bargain with the representative of their employees.

On several different occasions, the Union asked the Respondents, both orally and in writing, for a list of the wage rates of bargaining unit personnel by that it could be in a position to formulate bargaining proposals concerning wages. Over a year has elapsed since the first request and no information has been supplied. Such information is presumptively relevant to the Union's duty to bargain on behalf of unit employees. By failing and refusing to furnish it in a timely fashion, the Respondents violated Section 8(a)(1) and (5) of the Act.

Since May 23, 1990, the Respondents have refused to meet with the Union, even after signing a settlement agreement obligating themselves to do so. Their representatives have stalled about setting a date for negotiations, refusing to return phone calls and giving the union negotiator the runaround when he attempted to establish a bargaining session (i.e., after getting nowhere with Loll with a request for a meeting, Lemmon was told by Johnson that Loll was boy everything). The Respondents' postsettlement offer, namely, the status quo, was no different from their presettlement posture and plainly demonstrated that their written agreement to abide by the Act was worthless. These acts and omissions constitute further violations of Section 8(a)(1) and (5) of the Act.

On the foregoing findings of fact and conclusions of law, and upon the entire record herein considered as a whole, I make the following

CONCLUSIONS OF LAW

1. J & C Towing Co., Inc. and Belmont Marine Services, Inc., and each of them, is now, and at all times material herein have been, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Steelworkers of America, AFL–CIO–CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees of J & C Towing, Inc., located at Wheeling, West Virginia, and all full-time and regular part-time production and maintenance employees of Belmont Marine

Services, Inc., located at Bellaire, Ohio, including all crane operators, oilers, welders, pilots, deckhands, and laborers, but excluding all office clerical employees and guards, professional employees, and supervisors within the meaning of the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. Since on or about February 12, 1990, the Union has been the exclusive collective-bargaining representative of all the employees in the unit found appropriate in Conclusion of Law 3, above, for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By unilaterally adopting a new written drug and alcohol policy; by unilaterally adopting a new written progressive disciplinary system respecting the failure of employees to notify the Company when they were not coming to work; by issuing disciplinary notices to employees pursuant to their unilaterally adopted policy of written warnings for not ''reporting off''; by stalling and footdragging in setting up negotiating sessions and by giving union representatives a runaround to avoid setting up negotiating sessions; by refusing to bargain face to face with union negotiators; by issuing disciplinary notices to in-plant members of the Union's negotiating team for missing work while they were engaged in collective bargaining; by offering only the status quo and by failing to make meaningful counterproposals to union bargaining proposals; by refusing to furnish the Union in a timely fashion with relevant information concerning wage rates of bargaining unit employees; and by refusing to bargain collectively in good faith with the Union as the duly selected exclusive bargaining representative of their employees, the Respondents herein violated Section 8(a)(5) of the Act.

6. By the acts and conduct set forth above in Conclusion of Law 4; by coercively interrogating employees concerning their union sympathies and activities and the union sympathies and activities of other employees; by soliciting grievances from employees during a representation election campaign with a view toward adjusting those grievances; by promising employees benefits if they would reject the Union; by threatening to go out of business or to close the plant if employees selected the Union as their bargaining representative; and by threatening to arrest union representatives if they came on company property, the Respondents herein violated Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondents herein have engaged in certain unfair labor practices, I will recommend that they be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Since the violations of the Act found herein are repeated, pervasive, and evidence an attitude on the part of the Respondents to behave in total disregard of their statutory obligations, I recommend to the Board a so-called broad 8(a)(1) order designed to suppress any and all violations of that section of the Act. *Hickmont Foods*, 242 NLRB 1357 (1979). The recommended Order will require the Respondents to supply the Union with the information it requested concerning wage rates, to meet with the Union at reasonable dates and hours to bargain in good faith concerning wages, hours, and terms and conditions of employment and, if agreement is reached, to embody that agreement in a written, signed contract. It will also require the Respondents to rescind their new unilaterally adopted work rules and attendance rules and to expunge from the personnel records of their employees any disciplinary actions taken pursuant to the rules and policies they unilaterally adopted. The recommended Order will direct the Respondents to bargain collectively in good faith with the Charging Party and to embody any agreement reached in a written, signed document. Because the Respondents have yet to do so, the certification year, which normally begins to run on the day of the certification, will be extended and will not begin to run until the Respondents begin to honor the certification. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). The recommended Order will also require the Respondents to post the usual notice, advising their employees of their rights and of the results in this case.

[Recommended Order omitted from publication.]